

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

V.

**WEINBERG, ROGER &
ROSENFELD**
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
510.337.1001

against Kingsborough Atlas Tree Surgery, Inc., a California Corporation (hereinafter referred to as “Defendant”). Plaintiffs, in this action, sought an audit entry as well as the payment of any unpaid fringe benefit contributions, liquidated damages, interest found to be due and owing as a result of the audit. Plaintiffs are also seeking all attorney’s fees, audit costs and other reasonable expenses incurred in connection with this action. The parties are desirous of settling this action and as such, the parties hereby stipulate and agree to settle this action under the following terms:

2. Defendant agrees to have judgment entered against it as follows:

a. Defendant agrees to pay the total sum of \$17,201.74, consisting of unpaid fringe benefit contributions, liquidated damages, and interest due and owing in the amount of \$7,425.74, and attorneys’ fees, audit costs, and other reasonable expenses in the amount of \$9,776.00. This amount shall be paid by Defendant in four (4) equal monthly installments, commencing with the first payment in November 2006. The monthly installments shall be due and payable as follows:

<u>Payment No.</u>	<u>Amount</u>	<u>Due Date</u>
1.	\$4,300.44	November 15, 2006
2.	\$4,300.44	December 15, 2006
3.	\$4,300.44	January 15, 2006
4.	\$4,300.44	February 15, 2006

b. Defendant agrees to submit to an audit by auditors selected by the Trust Funds at the premises of Defendant during business hours, or where the records are kept, at a reasonable time or times, and to allow said auditors to examine and copy such books, records, papers, reports of Defendant, relating to the time period beginning July 1, 2003 to date, that are relevant to the enforcement of the collective bargaining agreement or Trust Agreements, including but not limited to the following:

Individual earning records (compensation); W-2 forms; 1096 and 1099 forms; reporting forms for all Trust Funds; State DE-3 tax reports; workers compensation insurance report; employee time cards; payroll journal; quarterly payroll tax returns (form 941); check register and supporting cash voucher; Form 1120- 1040 or partnership tax returns; general ledger – (portion relating to payroll audit);

c. That an accounting be had between Plaintiffs and Defendant and it be ordered to pay any and all amounts found due and owing according to the terms of the collective bargaining agreement; and

d. The Judgment entered by the Court may be amended by the Plaintiffs to incorporate the outstanding sums ascertained from the audit to be due from Defendant and liquidated damages and interest on said sums as well as further attorney's fees, audit costs and other reasonable expenses.

3. The parties hereto stipulate and agree that Defendant shall remit payment of \$17,201.74 as described in Paragraph 2.a above to the Trust Funds' office. Said payments shall be made payable to the Operating Engineers Trust Fund and mailed to the Operating Engineers Trust Funds, 4044 North Freeway Blvd, Suite 140, Sacramento, California 95834, Attention: Wayne McBride.

4. The parties heretofore stipulate that if the payment as above-described in Paragraph 2.a. is received by the Trust Funds on the date specified above, or sooner, the funds have been deposited and cleared the bank upon which they were drawn, and if Defendant does not default on any other material condition contained herein, the Stipulation for Entry of Judgment shall be deemed paid in full and Plaintiffs shall cause their attorneys to immediately execute and file a Satisfaction of Judgment.

5. The parties hereto further stipulate and agree that if Defendant fails to make the payment provided for above in Paragraph 2.a., Plaintiffs may then execute upon the entire Judgment as described in Paragraph 2 in its entirety, minus the amount of any payments actually received, together with the interest that shall have accrued thereon.

6. The parties hereto further stipulate and agree that nothing herein prevents the Plaintiffs from seeking additional amounts from Defendant if a later audit of Defendant's books and records shows that additional unpaid contributions, which are unknown to Plaintiffs at the time of entering into this stipulation, are due and owing.

7. Additionally, Defendant agrees to remain bound to the collective bargaining agreement and comply with its obligations to submit all fringe benefit contributions to the Trust Funds in a

1 timely manner.

2 8. If Defendant defaults in the making said payments, and if Plaintiffs consult legal
3 counsel with respect thereto, there shall be added to Defendant's obligation under a modification to
4 this Stipulation for Entry of Judgment reasonable attorneys' fees, court costs and all other
5 reasonable expenses incurred by Plaintiffs in connection with such suit or claim, including any and
6 all appellate proceedings therein.

7 9. The parties further acknowledge that by entering into this stipulation, the Trust Fund in
8 no way waives its right to conduct an audit for the period of time covered by this action or to seek
9 payment of any contributions found due from an audit.

10 10. Defendant further stipulates and agrees that if Kingsborough Atlas Tree Surgery, Inc. is
11 sold, this Agreement shall be binding on its successors, heirs, and assigns regardless of whether it
12 changes the name or style or address of the business.

13 11. The provisions set forth in this Stipulation for Entry of Judgment are not in violation of
14 any state or federal law. However, if any portion of said stipulation is found to be in violation of
15 any state or federal law, then Defendant shall continue to pay the indebtedness outlined herein
16 under Paragraph 3.

17 12. Plaintiffs hereto stipulate and agree that if Defendant complies with Paragraphs 2, 3 and
18 4, Plaintiffs will waive the remaining the interest incurred in this action. Plaintiffs hereby stipulate
19 and agree that once Defendant has complied with paragraph 3 of the Stipulation for Entry of
20 Judgment, Plaintiffs shall file a satisfaction of judgment with the Court.

21 13. Plaintiffs and Defendant acknowledges to Plaintiffs that Defendant has had the
22 opportunity to be represented by independent legal counsel of its own choice throughout all of the
23 negotiations that preceded the execution of this Stipulation for Entry of Judgment. Plaintiffs and
24 Defendant further acknowledges that they have had adequate opportunity to perform whatever
25 investigation or inquiry they may deem necessary in connection with the subject matter of this
26 Stipulation for Entry of Judgment prior to its execution, and agree with the delivery and
27 acceptance of the considerations specified in this Stipulation for Entry of Judgment.

28 14. This Stipulation may be executed in counterpart.

1 15. The parties hereto mutually state that they have read the foregoing Stipulation for Entry
2 of Judgment and are fully aware of its contents and legal facts. This stipulation for entry of
3 Judgment constitutes the entire agreement of the parties and is entered into on the dates below
4 indicated.

5 Dated: 11/3, 2006

KINGSBOROUGH ATLAS TREE SURGERY, INC.

7 By: [Signature]

9 Dated: October __, 2006

OPERATING ENGINEERS TRUST FUNDS

13 By: _____

14 WAYNE McBRIDE
Operating Engineers Trust Fund

15 As to form only:

16 Dated: October __, 2006

17 WEINBERG, ROGER & ROSENFELD
A Professional Corporation

19 By: _____

20 CONCEPCIÓN E. LOZANO-BATISTA
Attorney for Plaintiffs

22 Dated: 11/3, 2006

JORDAN, AQUI & TYNAN

24 By: [Signature]

25 KAREN F. TYNAN
Attorney for Kingsborough Atlas Tree Surgery, Inc.

28 WEINBERG, ROGER &
ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1071
510.737.1001

1 15. The parties hereto mutually state that they have read the foregoing Stipulation for Entry
2 of Judgment and are fully aware of its contents and legal facts. This stipulation for entry of
3 Judgment constitutes the entire agreement of the parties and is entered into on the dates below
4 indicated.

5 Dated: October __, 2006

KINGSBOROUGH ATLAS TREE SURGERY, INC.

7 By: _____

9 Dated: October ~~27~~ 27, 2006

OPERATING ENGINEERS TRUST FUNDS

12 By: Wayne McBride
13 WAYNE McBRIDE, Collections Manager
14 Operating Engineers Trust Fund

15 As to form only:

16 Dated: October __, 2006

17 WEINBERG, ROGER & ROSENFELD
A Professional Corporation

18 By: Concepción E. Lozano
19 CONCEPCIÓN E. LOZANO-BATISTA
20 Attorney for Plaintiffs

22 Dated: __, 2006

JORDAN, AQUI & TYNAN

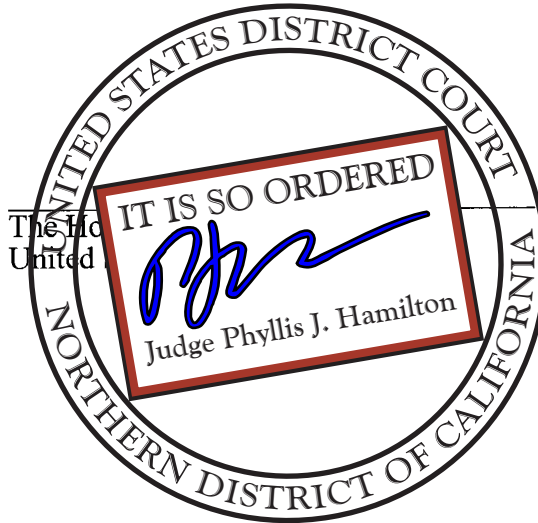
24 By: _____
25 KAREN F. TYNAN
26 Attorney for Kingsborough Atlas Tree Surgery, Inc.

[~~PROPOSED~~] ORDER

It is so ordered that Judgment is entered against Defendant Kingsborough Atlas Tree Surgery, Inc., A California Corporation, as set forth in the Stipulation For Entry of Judgment.

Dated: 11/29/06

108507/4376C8



CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On November 28, 2006, I served upon the following parties in this action:

Karen Tynan
Jordan Aqui & Tynan
1612 Fourth Street
Santa Rosa, CA 95404

copies of the document(s) described as:

STIPULATION FOR ENTRY OF JUDGMENT AND PROPOSED ORDER

- [X] BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- [] BY PERSONAL SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.
- [] BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.
- [] BY FACSIMILE** I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on November 28, 2006.

/s/ Karen Scott
Karen Scott